

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

580Q0237

HOUSE BILL NO. 1103

Introduced by: Representatives Lust, Cutler, Deadrick, Feinstein, Hunt, and Russell and
Senators Gillespie, Heidepriem, and Knudson

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding limited partnerships
2 and limited liability companies related to the rights of judgment creditors.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-34A-503 be amended to read as follows:

5 47-34A-503. (a) A transferee of a distributional interest may become a member of a limited
6 liability company if and to the extent that the transferor gives the transferee the right in
7 accordance with authority described in the operating agreement or all other members consent.

8 (b) A transferee who has become a member, to the extent transferred, has the rights and
9 powers, and is subject to the restrictions and liabilities, of a member under the operating
10 agreement of a limited liability company and this chapter. A transferee who becomes a member
11 also is liable for the transferor member's obligations to make contributions under § 47-34A-402
12 and for obligations under § 47-34A-407 to return unlawful distributions, but the transferee is
13 not obligated for the transferor member's liabilities unknown to the transferee at the time the
14 transferee becomes a member.

15 (c) Whether or not a transferee of a distributional interest becomes a member under



subsection (a), the transferor is not released from liability to the limited liability company under the operating agreement or this chapter.

(d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, require access to information concerning the company's transactions, or inspect or copy any of the company's records.

(e) A transferee who does not become a member is entitled to:

(1) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) Receive, upon dissolution and winding up of the limited liability company's business:

(i) In accordance with the transfer, the net amount otherwise distributable to the transferor;

(ii) A statement of account only from the date of the latest statement of account agreed to by all the members;

~~(3) Seek under § 47-34A-801(a)(5) a judicial determination that it is equitable to dissolve and wind up the company's business.~~

(f) A limited liability company need not give effect to a transfer until it has notice of the transfer.

Section 2. That § 47-34A-504 be amended to read as follows:

47-34A-504. (a) On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment.

(b) A charging order constitutes a lien on the judgment debtor's distributional interest.

(c) A distributional interest in a limited liability company which is charged may be

1 redeemed:

2 (1) By the judgment debtor;

3 (2) With property other than the company's property, by one or more of the other
4 members; or

5 (3) With the company's property, but only if permitted by the operating agreement.

6 (d) This chapter does not affect a member's right under exemption laws with respect to the
7 member's distributional interest in a limited liability company.

8 (e) This section provides the exclusive remedy that a judgment creditor of a member's
9 distributional interest or a member's assignee may use to satisfy a judgment out of the judgment
10 debtor's interest in a limited liability company. No other remedy, including foreclosure on the
11 member's distributional interest or a court order for directions, accounts, and inquiries that the
12 debtor, member might have made, is available to the judgment creditor attempting to satisfy the
13 judgment out of the judgment debtor's interest in the limited liability company, ~~and no other~~
14 ~~remedy may be ordered by a court.~~

15 (f) No creditor of a member or a member's assignee has any right to obtain possession of,
16 or otherwise exercise legal or equitable remedies with respect to, the property of the company.

17 Section 3. That § 47-34A-801 be amended to read as follows:

18 47-34A-801. (a) A limited liability company is dissolved, and its business must be wound
19 up, upon the occurrence of any of the following events:

20 (1) An event specified in the operating agreement;

21 (2) Consent of the number or percentage of members specified in the operating
22 agreement;

23 (3) An event that makes it unlawful for all or substantially all of the business of the
24 company to be continued, but any cure of illegality within ninety days after notice to

the company of the event is effective retroactively to the date of the event for purposes of this section;

(4) On application by a member or a dissociated member, upon entry of a judicial decree that:

(i) The economic purpose of the company is likely to be unreasonably frustrated;

(ii) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

(iii) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

or

(iv) The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, ~~oppressive, or~~ fraudulent, ~~or unfairly prejudicial to the petitioner, or~~

~~(5) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business after the expiration of a specified duration or event, if the company was for a specified duration at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.~~

Section 4. That § 48-7-703 be amended to read as follows:

48-7-703. On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not

1 deprive any partner of the benefit of any exemption laws applicable to the partner's partnership
2 interest.

3 This section provides the exclusive remedy that a judgment creditor of a general or limited
4 partner or of the general or limited partner's assignee may use to satisfy a judgment out of the
5 judgment debtor's interest in the partnership. No other remedy, including foreclosure on the
6 general or limited partner's partnership interest or a court order for directions, accounts, and
7 inquiries that the debtor, general or limited partner might have made, is available to the
8 judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the
9 limited partnership; ~~and no other remedy may be ordered by a court.~~ No creditor of a partner or
10 a partner's assignee has any right to obtain possession of, or otherwise exercise legal or equitable
11 remedies with respect to, the property of the partnership.